

REMARKS

Applicants thank Examiners Roy and Mantis-Mercader for their telephone discussion with the undersigned and Mr. Brian Chase regarding this application on May 11, 2005. Independent claim 24 and the cited references were discussed.

Administrative Overview

Claims 24, 26–34, 36–38, 40–44, and 46–48 were pending in this application upon issuance of an Office action, dated February 8, 2005. The Office action rejects these claims under the judicially created doctrine of obviousness-type double patenting over claims 1–23 of U.S. Patent No. 6,385,484 to Costa et al. (“Costa”). The Office action further rejects claims 24, 26–32, 36–38, 40–42, and 46–48 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,571,118 to Utzinger et al. (“Utzinger”), claims 24, 32–34, 38, 42–44, and 48 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,999,844 to Gombrich et al. (“Gombrich”), and claims 33, 34, 43, and 44 under 35 U.S.C. § 103(a) as being unpatentable over Utzinger in view of Gombrich.

Applicants amend the specification as requested in the Office action to correct informalities. Additionally, applicants have amended the paragraph beginning on page 12, line 14, as reflected in the Amendments to the Specification above, in order to correct a typographical error.

Applicants cancel claim 48 without prejudice, reserving the right to pursue the subject matter of this claim in a continuation application. Therefore, rejections of claim 48 are rendered moot.

Applicants amend claims 24, 26, 27, 30–32, 36–38, 40–42, 46, and 47 as reflected in the Listing of Claims above, and Applicants add new dependent claims 49–52. The amendments and new claims are supported in the application as originally filed, for example, on page 13, lines 9–11; in Figures 3 and 4; and on page 11, line 9, through page 13, line 3. The amendment of independent claim 24 rectifies the informality noted in the Office action regarding dependent claim 32.

No new matter has been added by any of these amendments.

Applicants Request Obviousness-Type Double Patenting Rejection Be Held in Abeyance

Applicants respectfully request that the obviousness-type double-patenting rejection of claims 24, 26–34, 36–38, 40–44, and 46–47 over claims 1–23 of Costa be held in abeyance until all the claims are deemed otherwise allowable. Applicants will address any obviousness-type double-patenting rejections should it become necessary.

Claims as Amended Are Patentable Over the Cited Art

Applicants assert that none of the cited references, alone or in combination, teach or suggest the combined elements of either of independent claims 24 or 38, and, therefore, that claims 24 and 38 are patentable in light of the art. Likewise, because a dependent claim includes all the limitations of the independent claim from which it depends, Applicants assert that all pending dependent claims are patentable in light of the art.

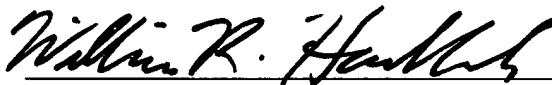
For example, none of the cited art teach or suggest, alone or in combination, determining whether fluorescence spectral data from a test specimen illuminated with substantially monochromatic radiation is determinate of the test specimen having a first known condition, and, if the fluorescence spectral data is not determinate of the test specimen having the first known condition, using reflectance spectral data in classifying the test specimen.

Conclusion

Applicants request that the Examiner reconsider the claims in light of the foregoing Amendment and Response. Applicants respectfully submit that in view of the amendments and remarks herein, claims 24, 26–34, 36–38, 40–44, 46, 47, and 49–52 are in condition for allowance. Applicants, therefore, respectfully request issuance of a Notice of Allowance in due course.

If the Examiner believes that it would be helpful to discuss any aspect of the application by telephone, the undersigned representative cordially invites the Examiner to call at the telephone number given below.

Respectfully submitted,



William R. Haulbrook, Ph.D.
Attorney for Applicant
Goodwin Procter, LLP
53 State Street
Boston, Massachusetts 02109

Date: June 2, 2005
Reg. No. 53,002

Tel. No.: (617) 570-1013
Fax No.: (617) 523-1231

2454987.4